

## **REMARKS/ARGUMENTS**

This is meant to be a complete response to the Final Office Action mailed on April 3, 2008. In the Office Action the Examiner rejected claims 1-8. The following is a disposition of the claims. Claims 1 and 2 are currently amended, claims 3-8 have been previously presented, and claims 9 and 10 are new.

### **New Matter**

Applicant respectfully submits that everything added to the amended claims has support in the original disclosure, thus should not be considered new matter. More specifically, support for the limitation of the aggregate comprising about 50% by weight to about 99.8% by weight aggregate having a sieve size of less than about 4.75 mm can be found in Tables 8 and 9. Both Tables show gradation embodiments having at least 99.8% of the aggregate implemented by the invention passing through a 4.75 mm sieve. Support for the limitation of the aggregate comprising about 26% by weight to about 53.8% by weight aggregate having a sieve size of less than about 1.18 mm can be found in Tables 8 and 9. Both Tables show a gradation embodiment having at least 53.8% of the aggregate implemented by the invention passing through a 1.18 mm sieve.

### **Claim Rejections - 35 USC § 112, First Paragraph**

In the Office Action dated April 3, 2008, the Examiner rejected Claims 1-8 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Applicant respectfully submits that the above stated rejection of claims 1-8 under 35 U.S.C. 112, first paragraph, is moot in view of the amendments made to independent claim 1.

### **Claim Rejections - 35 USC § 112, Second Paragraph**

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant respectfully submits that the above stated rejection of claim 2 under 35 U.S.C. 112, second paragraph, is moot in view of the amendments made to dependent claim 2.

### **Claim Rejections - 35 USC §103**

In the Office Action dated April 3, 2008, the Examiner rejected Claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over Maier (UK 1448158) in view of Cramwinckel (U.S. 3,822,556).

Applicant respectfully submits that the above stated rejection of claims 1-6 under 35 U.S.C. 103(a) is traversed. That is, it is respectfully submitted that the prior art references of Maier and Cramwinckel, whether

viewed singularly or in combination, do not disclose, teach or even suggest the invention recited in claim 1.

Applicant's independent claim 1, as presently amended, is directed to an interlayer for placement on a paved surface, comprising a mixture of: aggregate comprised of no more than about 15% by weight natural sand, wherein the aggregate is comprised of about 50% by weight to about 99% by weight aggregate having a sieve size of less than about 4.75 mm; and an asphalt binder, wherein said interlayer has a Hveem Stability at 60°C and 50 gyrations of at least about 22 and a Flexural Beam Fatigue of at least about 50,000 cycles at 2000 micorstrains, 10 Hz,  $3.0 \pm 2.0\%$  air voids, at 0-30°C.

Maier teaches a material for making asphaltic concrete road surfaces. The material comprising crushed stone, sand, fillers, and a binder. The binder implemented in the Maier reference is defined as a hard bitumen. The hard bitumen defined in lines 83-90 of page 1 and limited to "an additive comprising 40 to 50% by wt. tar oils, 2 to 5% by wt. naphthalene, 2 to 5% by wt. anthracene, 1 to 2% by wt. phenols, 3 to 8 % by wt. polyamines, the remainder being pitch or tar." The material for making asphaltic concrete road surfaces also includes a mineral mixture. The mineral mixture comprising:

- 35 parts by weight crushed gravel of an average particle size of 8-12 mm

- 15 parts by weight crushed gravel of an average particle size of 5-8 mm
- 15 parts by weight crushed gravel of an average particle size of 2-5 mm
- 12 parts by weight crushed sand
- 12 parts by weight natural sand
- 10 parts by weight limestone filler
- 1 part by weight asbestos

The Maier reference does not teach or describe an interlayer comprising a mixture of: aggregate comprised of no more than about 15% by weight natural sand, wherein ***the aggregate is comprised of about 50% by weight to about 99% by weight aggregate having a sieve size of less than about 4.75 mm***; and an asphalt binder, ***wherein said interlayer has a Hveem Stability at 60°C and 50 gyrations of at least about 22 and a Flexural Beam Fatigue of at least about 50,000 cycles at 2000 micorstrains, 10 Hz, 3.0 ± 2.0% air voids, at 0-30°C.***

Contrary to the Examiner's position, it is respectfully submitted that the Cramwinckel reference does not supply the deficiencies of the teachings of the Maier reference. The Cramwinckel reference teaches an asphaltic composition comprising asphaltic bitumen and mineral matter, which is particularly suited for lining bottoms of water reservoirs and slopes.

The Cramwinckel reference does not teach an or describe an interlayer comprising a mixture of: aggregate comprised of no more than about 15% by weight natural sand, wherein the aggregate is comprised of about 50% by weight to about 99% by weight aggregate having a sieve size of less than about 4.75 mm; and an asphalt binder, wherein said interlayer has a Hveem Stability at 60°C and 50 gyrations of at least about 22 and a Flexural Beam Fatigue of at least about 50,000 cycles at 2000 micorstrains, 10 Hz,  $3.0 \pm 2.0\%$  air voids, at 0-30°C.

For the reasons set forth above, it is respectfully submitted that the Maier reference does not disclose the elements of claim 1; and the Cramwinckel reference does not supply the deficiencies of the Maier reference. Neither reference, either singularly or in combination discloses, teaches, or even suggests the safety helmet recited in Applicant's claim 1, as amended.

In view of the above, it is respectfully requested that the Examiner withdraw the rejection of claim 1, and thus claims 2-6 for depending therefrom, under 35 U.S.C. 103(a), as applicable to claims now pending in the application.

#### **Claim Rejections - 35 USC §103**

In the Office Action dated April 3, 2008, the Examiner rejected Claims 7-8 under 35 U.S.C 103(a) as being unpatentable over Maier in view of

Cramwinckel (U.S. 3,822,556) as applied to Claim 1, and further in view of Malloy et al (U.S. 6,669,773).

Applicant respectfully submits that the above stated rejection of claims 1-6 under 35 U.S.C. 103(a) is traversed. That is, it is respectfully submitted that the prior art references of Maier, Cramwinckel, and Malloy et al., whether viewed singularly or in combination, do not disclose, teach or even suggest the invention recited in claim 1.

For the reasons set forth above, it is respectfully submitted that the Maier reference and the Cramwinckel reference do not disclose the elements of claim 1, as presently claimed. Further, applicant submits that the Malloy et al. reference does not supply the deficiencies of combination of the Maier reference and the Cramwinckel reference. The Malloy et al. reference is directed toward a synthetic lightweight aggregate composition comprising fly ash and a mixture of two or more polymer components.

Thus, it is readily apparent that Applicant's inventive concept as recited in Applicant's independent claim 1, and thus, claims 7-8 which depend therefrom, is not taught or even suggested by the combination of the Maier reference, the Cramwinckel reference, and the Malloy et al. reference.

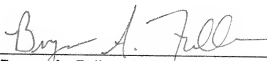
In light of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 7-8 under 35 U.S.C. 103(a).

## CONCLUSION

It is respectfully submitted that this application, as now amended, is in condition for allowance for the reasons stated above. Therefore, it is requested that the Examiner reconsider each and every rejection as applicable to the claims pending in the application and pass such claims to an expedient issue.

The foregoing is meant to be a complete response to the Final Office Action mailed April 3, 2008.

In the event that any outstanding issues remain that would delay the allowance of this application, the examiner is urged to contact the undersigned to telephonically discuss such outstanding issues.



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